

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA K. MCCLURE and DEPARTMENT OF THE ARMY,
Alexandria, VA

*Docket No. 97-1935; Submitted on the Record;
Issued August 11, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective July 30, 1996 on the grounds that she had no further condition or disability due to her accepted employment injury; (2) whether the Office properly terminated appellant's authorization for medical treatment; and (3) whether appellant has established that she had continuing disability after July 30, 1996 causally related to her accepted employment injury.

The Office accepted appellant's February 1995 occupational disease claim for allergic rhinitis and placed her on the periodic rolls effective September 22, 1995.

In a report dated May 28, 1995, Dr. Seth C. Craig, a Board-certified allergist and appellant's attending physician, discussed his treatment of appellant for allergic rhinitis and sinus infections and indicated that testing revealed allergies to "pollens, molds, house dust mites and animal danders." He noted that her symptoms, which included disabling headaches, occurred primarily at work and that "[t]he cause of the symptoms is the exposure to allergens in the workplace."

The Office referred appellant to Dr. Jerome S. Putnam, a Board-certified internist, for a second opinion evaluation. In a report dated September 28, 1995, he recommended further testing by an allergist and stated:

"While it is entirely possible that some of her medical conditions currently are related to her occupational exposure to a variety of fungi, it is hard for me to accept that her current level of drug allergies is in any way related to that exposure. It is also difficult for me to believe that her level of symptoms is related to that remote event. She does not have any evidence of destructive lung disease and while it is perhaps better for her to avoid exposure to a dirty environment, I see no reason that she cannot return to her job as a computer

specialist, especially if she were in an environment that did not have the presence of fungal elements.”

The Office referred appellant to Dr. Daniel Ein, a Board-certified allergist and internist, for a second opinion evaluation. In a report dated January 29, 1996, he diagnosed rhinitis and sinusitis with severe subjective and mild objective findings. Dr. Ein found that it was not possible to determine whether appellant’s occupational problems had resolved and stated that based on the objective evidence she should return to work.

In a report dated February 12, 1996, Dr. Craig opined that appellant had allergic rhinitis as well as asthma “brought on by mold exposure during the renovations in her office building.” He further stated, “It appears that the molds and dust in her work environment sensitized her so that she now has a lot of difficulty breathing when she is exposed to these items again. She cannot return to the workplace because there are still problems with air pollution and ventilation in her office....”

In a supplemental report dated February 14, 1996, Dr. Ein stated that appellant was not working solely due to her symptoms.

By letter dated February 28, 1996, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Peter R. Smith, a Board-certified internist and allergist, for an impartial medical examination.

In a report dated March 13, 1996, Dr. Smith discussed appellant’s history of symptoms and the results of objective testing. He listed findings on physical examination and the results of skin testing. Dr. Smith noted that the results of the skin testing were predominately negative. He diagnosed vasomotor, or nonallergic rhinitis, which he indicated occurred due to odors, changes in temperature or humidity, inhaled irritants or stress. Dr. Smith noted that workplace exposure to such irritants or conditions could cause increased symptoms which resolved when conditions improved. Dr. Smith stated:

“I do not feel that [appellant’s] ongoing symptoms are related to her past exposure to the low level of fungi or any other aeroallergen in the workplace. Most importantly, there is no evidence to suggest that allergy exists to any airborne allergens at this time.”

Dr. Smith opined that appellant’s symptoms had developed into multiple chemical sensitivities not related to a physiological condition. He concluded that appellant could return to full-time employment within an area with good air quality and stated that her work environment had not sensitized her “in any way”.

By letter dated June 19, 1996, the Office notified appellant that it proposed to terminate her compensation benefits on the grounds that she had no further condition or disability due to the accepted employment injury.

Appellant submitted a report dated June 26, 1996 from Dr. Craig, who diagnosed multiple chemical sensitivities and found that she should work in a clear environment and that her former workplace was not sufficient due to poor ventilation.

In a decision dated July 30, 1996, the Office terminated appellant's compensation benefits and authorization for medical treatment effective that date. In a decision dated February 6, 1997, the Office denied merit review of its prior decision.

On February 18, 1997 appellant requested reconsideration and submitted additional medical evidence. By decision dated March 17, 1997, the Office denied modification of its prior merit decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 30, 1996.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

Under the Federal Employees' Compensation Act,⁴ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.⁵ However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for the periods after the aggravation has ceased.⁶

Where there exists a conflict in medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁷ The Board finds that Dr. Smith's opinion, which is based on a proper factual and medical history, is well rationalized and supports that appellant's allergic rhinitis ceased by July 30, 1996, the date the Office terminated her compensation. He accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

⁶ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁷ *Leanne E. Maynard*, 43 ECAB 482 (1992).

appellant's condition which comported with his findings.⁸ Dr. Smith provided medical rationale for his opinion by explaining why work factors may have contributed to appellant's condition and why her symptoms were no longer caused by her employment exposure. Accordingly, the Board finds that the Office discharged its burden of proof to justify termination of appellant's compensation after July 30, 1996.

The Board further finds that the Office properly terminated appellant's authorization for medical benefits effective July 30, 1996.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁹ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment. The Office met this burden through the report of Dr. Smith, who found that appellant had no residual condition caused by her accepted employment injury and provided rationale in support of that conclusion.

The Board further finds that appellant has not established that she had continuing disability after July 30, 1996 causally related to her accepted employment injury.

Given that the Board has found that the Office properly relied upon the opinion of the impartial medical examiner, Dr. Smith, in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.¹⁰ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹¹

Appellant submitted a report dated August 21, 1997 from Dr. Craig, in which he diagnosed allergic and vasomotor rhinitis. He opined, "Most likely she is reacting to a build up of chemicals in the environment, as well as some residual mold sensitivity. Her symptoms markedly worsen at the workplace, which suggests that there is a build up of things which are toxic to her system at the workplace." Appellant further submitted a report dated January 29, 1997, from Dr. Craig, who opined that appellant should not return to her former work environment "because the molds and chemicals in that environment would be detrimental to your health." In a note dated February 17, 1997, Dr. Craig indicated that he continued to treat appellant for allergies and asthma. However, as Dr. Craig was on one side of the conflict that Dr. Smith resolved, his additional reports are insufficient to overcome the weight accorded to Dr. Smith's report as the impartial medical specialist or to create a new conflict.¹²

⁸ See *Melvina Jackson*, 38 ECAB 443 (1987).

⁹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁰ *George Servetas*, 43 ECAB 424 (1992).

¹¹ *John M. Tornello*, 35 ECAB 234 (1983).

¹² *Dorothy Sidwell*, 41 ECAB 857 (1990).

In a report dated August 29, 1996, Dr. Joanne Newman, a psychologist, stated that appellant had no “secondary gain from her medical situation” and had made a “remarkable adjustment” to her situation. Her report, however, is of little relevance to the pertinent issue in the present case of whether appellant has any continuing disability due to her accepted employment injury. Appellant, consequently, has not met her burden of proof to establish any employment-related continuing disability.

The decisions of the Office of Workers’ Compensation Programs dated March 17 and February 6, 1997, and July 30, 1996 are hereby affirmed.

Dated, Washington, D.C.

August 11, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member